IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6488 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SADHU VASWANI MISSION

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6488 of 2002

MR HJ NANAVATI for Petitioner No. 1

MR RV DESAI, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 14/10/2002

ORAL JUDGEMENT

Rule. Mr RV Desai, learned AGP waives service of Rule for the respondents.

2. The petitioner institution claims to be a

minority institution running a secondary school. Ex-Principal Mrs SP Kumar filed application No. 253 of 2002 before the Gujarat Secondary Education Tribunal challenging her apprehended termination. The Tribunal granted ad-interim injunction restraining the petitioner-management from terminating the applicant's services except in accordance with the procedure prescribed under the Act. The petitioner-management filed a detailed reply and also filed an application for vacating the ex-parte ad-interim relief.

3. According to the petitioner-management, the applicant before the Tribunal had given resignation on 8.7.2002 and the resignation was accepted by the petitioner-management on 10.7.2002. The Tribunal accepted the case of the petitioner-management and gave the following findings on 19.12.2000 (Annexure "B") :-

> "8. It is clear from the submission of school management and also the remarks of the D.E.O. that the respdt. school is a minority institution and therefore, it is exempted from application of Sec. 36(4) of the Act and therefore, the contention of the applicant that the resignation was not submitted in person before the D.E.O. cannot be accepted.
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> 9. For reasons narrated hereinabove, the prayer for interim relief is refused. Interim relief granted earlier stands vacated. At this stage, L.A. for applicant Mr Mishra prays for continuation of interim order for two weeks to enable him to approach the higher forum and the request is objected by the L.A. for school. In the facts and circumstances of the case, the request for continuation of the interim relief is refused. Final hearing in due course."

4. In view of the aforesaid development, the petitioner-management requested the DEO to grant no objection certificate for filling in the vacant post of principal. The DEO declined to grant the NOC on the ground that the ad-interim injunction granted by the Tribunal was operative. The said communication dated 23.11.2001 (Annexure "A") is under challenge in this petition.

5. Mr HJ Nanavati, learned counsel for the petitioner points out that the Tribunal had vacated the ex-parte ad-interim relief as far back as on 19.12.2000

(Annexure "B") and, therefore, the DEO was not justified in rejecting the petitioner's application for NOC when the post was lying vacant and the petitioner-management is required to fill in the post of Principal subject to the result of application No. 253 of 2000 pending before the Tribunal.

6. Mr Desai, learned AGP for the respondents submits that when the application is pending before the Tribunal, making any appointment may create third party rights and create unnecessary complications.

7. Having regard to the fact that the application before the Tribunal is to be heard finally in due course and, therefore, it will be atleast a few years before the application will be heard by the Tribunal and the petitioner school cannot do without a principal, it would be just and proper to direct the respondents, particularly respondent No. 2-DEO, to issue NOC to the petitioner-school management for filling in the post of Principal subject to the condition that the appointment will be made subject to the outcome of application No. 253 of 2000 pending before the Gujarat Secondary Education Tribunal.

8. The petition is accordingly allowed in the aforesaid terms. Respondent No. 2-DEO is directed to issue NOC to the petitioner-school management for filling in the post of Principal subject to the condition that the appointment will be made subject to the outcome of application No. 253 of 2000 pending before the Gujarat Secondary Education Tribunal. The Interview Committee will also expressly tell the selected candidate that the appointment will be subject to the result of the application pending before the Tribunal. The appointment order shall also expressly state that the appointment will be subject to the outcome of application No. 253 of 2000 pending before the Gujarat Secondary Education Tribunal.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

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